

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/695 /2009 – SM[[BR]

Date 21/07/2011

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S OMAX AUTOS LTD. (SPROCKET DIVISION),
69 K.M. STONE, DELHI-JAIPUR ROAD, DARUHERA,
HARYANA.
M/S OMAX AUTOS LTD. (SPROCKET DIVISION),

Appellant
Vs
Respondent

C.C.E. DELHI III

I am directed to transmit herewith a certified copy of Final order No. 420 /2011-SM[BR]
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

dated 13.7.2011

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR,
VANIJYA NIKUNJ, PHASE V,
GURGAON - 122016 (HARYANA)

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd., No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8, Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court-IV
Excise Appeal No.695 of 2009-SM

Date of Hearing/Decision: 13.07.2010

(Arising out of Order-in-Appeal No.284/ANS/GGN/2008 dated
16.12.08 passed by the CCE(A), Delhi-III)

For approval and signature:

Hon'ble Mr.Ashok Jindal, Member (Judicial)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s.Omax Autos Ltd.

Appellant

Vs.

CCE, Delhi-III

Respondent

Present for the Appellant: Shri B.L.Narsimhan, Advocate

Present for the Respondent: Shri Fateh Singh, SDR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)

Final ORDER NO. 420/2011 SM (Br)

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order wherein Cenvat Credit availed by them on inputs have been denied and penalty of equivalent amount of duty has been imposed.

2. The brief facts of the case are that the appellants are engaged in the manufacturing business of motor vehicle parts. During the

course of manufacturing activity, they are procuring inputs such as H.R.Sheets. For that, the appellants placed a purchase order on their supplier for H.R.Sheets and the said H.R.Sheets have been supplied by the supplier but in the invoices, these H.R.Sheets are shown as C.R.Sheets and against that the appellants took cenvat credit. During the course of investigation, it was found that in the invoices, the description of the goods is not as per purchase order or the goods received by the appellants in their factory, therefore it was alleged that the appellants have contravened Rule 7(1) (a) of Cenvat Credit Rules, 2004. The show cause notice was issued which was adjudicated and demand has been confirmed alongwith interest and equivalent amount of penalty. The said order was challenged before the Commissioner (Appeals) who confirmed the order of the adjudicating authority. Therefore, the appellants are in appeal before this Tribunal.

3. Shri B.I.Narsimhan, Advocate, learned Counsel appeared on behalf of the appellants and submitted that there is no dispute that the appellants have placed purchase order for H.R.Sheets and in fact they have received these H.R.Sheets under the cover of invoices wherein inadvertently H.R.Sheets are mentioned as C.R.Sheets. It is also not disputed that the goods received under these invoices were used in the manufacture of final products. Therefore, the cenvat credit cannot be denied as per proviso to Rule 7(1) (a) of Cenvat Credit Rules, 2004, wherein it has been prescribed that if the said document does not contain all the particulars but contains the details of duty or service taxable, description of the goods or assessable value, Central Excise or Service Tax registration number of the

person issuing the invoice, name and address of the factory or warehouse or premises, therefore, the cenvat credit cannot be denied. He further relied on the decision of the Tribunal in the case of Mehta Engineers Ltd. vs. CCE, Ludhiana reported in 2004 (178) ELT 688 and in the case of Emkay Industries vs. CCE, Ludhiana reported in 2005 (191) ELT 253. Therefore, he prayed that the impugned order is to be set aside.

4. On the other hand, learned DR appeared on behalf of the Revenue and submitted that by putting C.R.Sheets on the invoice description of the goods changed as both H.R.Sheets and C.R.Sheets are different items, therefore, there may be malafide intention on the part of the supplier or by the appellants to avail inadmissible cenvat credit, therefore the lower authorities have rightly denied the credit for contravention of rules. He further submits that the case law relied upon by the learned Advocate are distinguishable in the facts of the present case. Therefore, he prayed that the impugned order is to be upheld.

5. Heard both sides and considered the submissions made by them.

6. On careful consideration of the submissions made by both sides, I find that the short issue involved in this case is whether in the facts and circumstances of the case, the appellants are entitled to take cenvat credit on the strength of invoices where the goods described as C.R.Sheets instead of H.R.sheets or not? It is an admitted ^{fact} that the appellants have placed a purchase order for H.R.Sheets and physically received H.R.sheets in their factory which

have been used by them in the manufacture of their final products. The only description mentioned in the invoice is C.R.Sheets instead H.R.Sheets. As per provisions of Rule 7(1) (a) where it has been clarified that the documents contains the details of duty or service taxable, description of the goods or assessable value, Central Excise or Service Tax registration number of the person issuing the invoice, name and address of the factory or warehouse or premises, the assessee is entitled to take cenvat credit. Although the description of the goods does nto match with the actual receipt of the goods but the fact is not denied that these H.R.sheets have been received by the appellants in their factory. Therefore, the appellants are entitled to take cenvat credit on the goods received by them. It is not the allegation that the appellants had procured H.R.Sheets clandestinely without cover of invoice, therefore, the cenvat credit cannot be denied. In the case law cited by the learned Advocate, there is also discrepancy of the discretion of the goods as H.R.Sheets or H.R.Coils wherein the Tribunal has held that the cenvat credit is available on H.R.Sheets and the H.R.Sheets and H.R.Coils are the same, the ratio laid down by the Tribunal in that case, Although the submission of the learned Advocate that the description of the goods different but the fact is not denied, the appellants received the goods, therefore, the appellants are entitled to take credit. Hence, the impugned order is set aside and the appeal is allowed with consequential benefits.

(ASHOK JINDAL)
MEMBER (JUDICIAL)